

ASSEMBLY BILL

No. 2482

Introduced by Assembly Member Harman

February 23, 2006

An act to amend and repeal Section 1282.4 of the Code of Civil Procedure, relating to arbitration.

LEGISLATIVE COUNSEL'S DIGEST

AB 2482, as introduced, Harman. Arbitration: legal representation.

Existing law, effective until January 1, 2007, permits persons admitted to the bar of any other state to represent a party in an arbitration proceeding in this state, or to render legal services in this state in connection with an arbitration proceeding in another state. Existing law requires out-of-state attorneys representing a party in a California arbitration proceeding to serve upon the arbitrator, the State Bar of California, the parties, and counsel, a certificate containing specified information prior to the first scheduled hearing in the arbitration. Existing law also permits any party to an arbitration arising under certain collective bargaining agreements to be represented by any person.

This bill would remove the January 1, 2007, repeal date, thereby extending those provisions indefinitely, and make a related, conforming change.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1282.4 of the Code of Civil Procedure, as amended by Section 1 of Chapter 607 of the Statutes of 2005, is amended to read:

1282.4. (a) A party to the arbitration has the right to be represented by an attorney at any proceeding or hearing in arbitration under this title. A waiver of this right may be revoked; but if a party revokes such waiver, the other party is entitled to a reasonable continuance for the purpose of procuring an attorney.

(b) Notwithstanding any other provision of law, including Section 6125 of the Business and Professions Code, an attorney admitted to the bar of any other state may represent the parties in the course of, or in connection with, an arbitration proceeding in this state, provided that the attorney, if not admitted to the State Bar of California, timely files the certificate described in subdivision (c) and the attorney's appearance is approved by the arbitrator, the arbitrators, or the arbitral forum.

(c) Prior to the first scheduled hearing in an arbitration, the attorney described in subdivision (b) shall serve a certificate on the arbitrator or arbitrators, the State Bar of California, and all other parties and counsel in the arbitration whose addresses are known to the attorney. In the event that the attorney is retained after the first hearing has commenced, then the certificate shall be served prior to the first hearing at which the attorney appears. The certificate shall state all of the following:

- (1) The attorney's residence and office address.
- (2) The courts before which the attorney has been admitted to practice and the dates of admission.
- (3) That the attorney is currently a member in good standing of, and eligible to practice law before, the bar of those courts.
- (4) That the attorney is not currently on suspension or disbarred from the practice of law before the bar of any court.
- (5) That the attorney is not a resident of the State of California.
- (6) That the attorney is not regularly employed in the State of California.
- (7) That the attorney is not regularly engaged in substantial business, professional, or other activities in the State of California.

1 (8) That the attorney agrees to be subject to the jurisdiction of
2 the courts of this state with respect to the law of this state
3 governing the conduct of attorneys to the same extent as a
4 member of the State Bar of California.

5 (9) The title of the court and the cause in which the attorney
6 has filed an application to appear as counsel pro hac vice in this
7 state or filed a certificate pursuant to this section in the preceding
8 two years, the date of each application, and whether or not it was
9 granted.

10 (10) The name, address, and telephone number of the active
11 member of the State Bar of California who is the attorney of
12 record.

13 (d) Failure to timely file the certificate described in
14 subdivision (c) or, absent special circumstances, repeated
15 appearances shall be grounds for disqualification from serving as
16 the attorney of record in the arbitration in which the certificate
17 was filed.

18 (e) An attorney who files a certificate containing false
19 information or who otherwise fails to comply with the standards
20 of professional conduct required of members of the State Bar of
21 California shall be subject to the disciplinary jurisdiction of the
22 State Bar with respect to any of his or her acts occurring in the
23 course of the arbitration.

24 (f) Notwithstanding any other provision of law, including
25 Section 6125 of the Business and Professions Code, an attorney
26 who is a member in good standing of the bar of any state may
27 represent the parties in connection with rendering legal services
28 in this state in the course of and in connection with an arbitration
29 pending in another state.

30 (g) Notwithstanding any other provision of law, including
31 Section 6125 of the Business and Professions Code, any party to
32 an arbitration arising under collective bargaining agreements in
33 industries and provisions subject to either state or federal law
34 may be represented in the course of, and in connection with,
35 those proceedings by any person, regardless of whether that
36 person is licensed to practice law in this state.

37 (h) Nothing in this section shall apply to Division 4
38 (commencing with Section 3201) of the Labor Code.

39 (i) (1) In enacting the amendments to this section made by
40 Assembly Bill 2086 of the 1997–98 Regular Session, it is the

1 intent of the Legislature to respond to the holding in *Birbrower v.*
2 Superior Court (1998) 17 Cal.4th 117, as modified at 17 Cal.4th
3 643a (hereafter *Birbrower*), to provide a procedure for
4 nonresident attorneys who are not licensed in this state to appear
5 in California arbitration proceedings.

6 (2) In enacting subdivision (g), it is the intent of the
7 Legislature to make clear that any party to an arbitration arising
8 under a collective bargaining agreement governed by the laws of
9 this state may be represented in the course of and in connection
10 with those proceedings by any person regardless of whether that
11 person is licensed to practice law in this state.

12 (3) Except as otherwise specifically provided in this section, in
13 enacting the amendments to this section made by Assembly Bill
14 2086 of the 1997–98 Regular Session, it is the Legislature’s
15 intent that nothing in this section is intended to expand or restrict
16 the ability of a party prior to the decision in *Birbrower* to elect to
17 be represented by any person in a nonjudicial arbitration
18 proceeding, to the extent those rights or abilities existed prior to
19 that decision. To the extent that *Birbrower* is interpreted to
20 expand or restrict that right or ability pursuant to the laws of this
21 state, it is hereby abrogated except as specifically provided in this
22 section.

23 (4) In enacting subdivision (h), it is the intent of the
24 Legislature to make clear that nothing in this section shall affect
25 those provisions of law governing the right of injured workers to
26 elect to be represented by any person, regardless of whether that
27 person is licensed to practice law in this state, as set forth in
28 Division 4 (commencing with Section 3200) of the Labor Code.

29 ~~(j) This section shall be operative until January 1, 2007, and~~
30 ~~on that date shall be repealed.~~

31 SEC. 2. Section 1282.4 of the Code of Civil Procedure, as
32 amended by Section 2 of Chapter 607 of the Statutes of 2005, is
33 repealed.

34 ~~1282.4. (a) A party to the arbitration has the right to be~~
35 ~~represented by an attorney at any proceeding or hearing in~~
36 ~~arbitration under this title. A waiver of this right may be revoked;~~
37 ~~but if a party revokes the waiver, the other party is entitled to a~~
38 ~~reasonable continuance for the purpose of procuring an attorney.~~

- 1 ~~(b) This section shall become operative on January 1, 2007.~~

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